#### **BOARD OF COUNTY COMMISSIONERS**

#### **AGENDA ITEM SUMMARY**

Meeting Date: 04-17-02	Division: County Administrator
Bulk Item: Yes X No	Department: Airports
AGENDA ITEM WORDING: Approval of I Development, Inc.	Lease Amendment with Marathon Hangar
ITEM BACKGROUND: Marathon Hangar Debidder chosen to build 32 enclosed hangars at the Magreement in December, 2000.	evelopment, Inc. (MHD, Inc) was the successful Marathon Airport. BOCC approved a lease
PREVIOUS REVELANT BOCC ACTION: in December 2000.	BOCC approved a lease agreement with MHD, Inc
CONTRACT/AGREEMENT CHANGES: payment applications and change orders will be pro-	This amendment specifies how Contractors ocessed.
STAFF RECOMMENDATIONS: Appro	val
TOTAL COST: N/A COST TO COUNTY:	BUDGETED: Yes No
REVENUE PRODUCING: Yes X No	AMOUNT PER YEAR \$6000.00
APPROVED BY: County Atty OMB/Pu	rchasing Risk Management
MARATHON AIRPORT MANAGER APPROV	AL: Theresa Cook
DIVISION DIRECTOR APPROVAL:	James Roberts County Administrator
<b>DOCUMENTATION:</b> Included	To Follow Not Required
DISPOSITION:	AGENDA ITEM# 62

Revised 2/27/01

#### , MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

OMB Form Revised 2/27/01 MCP #2

#### AMENDMENT TO LEASE AGREEMENT

Marathon Hangar Development, Inc.

	THIS	AMENDN	NENT is r	nade and	l entered in	nto this _		day or	f	**	
2002	by and	between	Monroe	County,	hereafter	County,	and	Marathon	Hangar	Developme	ent,
Inc. h	ereafte	r MHD or	· Tenant.								

WHEREAS, on the 13th day of December, 2000 the parties entered into a lease agreement for hangar space at the Marathon Airport, hereafter original lease. A copy of the original lease is attached to this amendment and made a part of it; and

WHEREAS, the parties desire to amend original agreement; now, therefore,

IN CONSIDERATION of the mutual promises and covenants set forth below, the parties agree as follows:

- 1. Paragraph 3(b) of the original agreement is amended to read:
  - 3. b) The County agrees to pay one-half of all the construction costs of the four hangar buildings, paved areas and infrastructure, as approved by the Florida Department of Transportation. Payment Applications will be processed through the Airports Business Office. Upon receipt of contractors payment application, a copy will be provided to MHD. MHD will furnish a check for one-half of the application amount to the Business Office. The Business Office will then forward the approved payment application, with the check from MHD, to the County Finance Department for review and payment.

All Change Orders must be approved by FDOT and/or FAA. Should MHD wish to proceed with any item of a Change Order not approved by FDOT and/or FAA MHD will be responsible for the entire cost of the item.

If additional funding, above the original amount of the FDOT and/or FAA agreements is not available, any costs incurred over the amount of the original FDOT and/or FAA grant will be paid entirely by MHD.

2. Except as set forth in paragraphs one and two of this lease extension agreement in all other respects the terms and conditions of the original agreement remain in full force and effect.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

OF MONROE COUNTY, FLORIDA						
By Mayor/Chairman						
Marathon Hangar Development, INC.						

JdairMHD2

APPROVED AS TO FORM AND LEGAL SUEFICIENCY.

BURNELLE SUEFICIENCY.

ROBERT N. WOLFE

DATE

#### LEASE AGREEMENT

This lease agreement is made and entered into this 3 day of December 2000 by and between Monroe County, a political subdivision of the State of Florida, whose address is the Marathon Airport, 9400 Overseas Highway, Marathon, FL 33050, hereafter County, and Marathon Hangar Development, Inc. (MHD), a Florida corporation, whose address is 11100 Overseas Highway, Marathon, FL 33050, hereafter MHD or Tenant. The parties agree as follows:

- 1. The County leases to MHD the real property at the Marathon Airport, hereafter Airport, depicted on Exhibit A, hereafter the premises. Exhibit A is attached to this lease and made a part of it. The premises are leased for the purposes of making available hangar space to operators of private aircraft. County hereby consents and agrees that MHD has the right to occupy the leased premises and has reasonable ingress, egress and access to the lease premises for the purpose of construction and by subcontractors and subtenants of the hangars throughout the term of the lease.
- 2. Within three years of the date of first written above hereafter the effective date, MHD must construct and complete on the premises four buildings, each building containing 8 hangars for a total of 32 hangars, plus all infrastructure and adjacent pavement needed to service the four buildings. The time for completion will be extended if any third party files an administrative or court challenge or appeal to the issuance of any necessary development approval. The extension will be equal to the time between when the appeal or challenge is filed and the final resolution. However, MHD must also diligently and in good faith defend its entitlement to the needed development order. The construction must proceed according to the following schedule:
- a) Within the first sixteen months after the effective date, MHD must construct and complete all the infrastructure needed for the four building hangar project, one of the four hangar buildings, and adjacent pavement. Complete means that a certificate of occupancy (CO) has been issued for the infrastructure and building.
- b) In the remaining twenty month period, MHD must construct and complete three hangar buildings. Upon completion of the fourth hangar building, MHD must have completed approximately 39,864 square feet of enclosed hangar space and approximately 49,991 square feet of paved area.
- c) Due to the urgent need at the Airport for additional hangar facilities, MHD acknowledges that time is of the essence in completing the hangar buildings, pavement and infrastructure and that failure to adhere to the construction schedule set forth in this lease entitles the County to terminate this lease for cause and to access the letter of credit as provided for in paragraph 5, so long as such delays are not the result of a natural or man made disaster, labor unrest or an act of the federal or state government.
- 3. a) All buildings and infrastructure must be built in accordance with all applicable land development regulations and building codes. Any architect or PE whose services are to be utilized by MHD must be selected by the County pursuant to the Consultants' Competitive Negotiation Act. The general contractor must be selected by the County pursuant to its purchasing policies and state law.
- b) The County agrees to pay one-half of all the construction costs of the four hangar buildings, paved areas and infrastructure on a reimbursement basis, payable monthly, for the costs incurred during the prior month. All invoices for payment must be submitted to the Airport Director for approval in the form required by the Director and the County's Clerk.

Construction costs includes architectural and engineering costs as well as the actual costs of construction. If the Director, County Engineer, Construction Manager, or airport consultant, and Clerk approve the invoice, then the Clerk shall pay the same. If not, the County officer, employee or consultant disapproving the invoice shall return it to MHD with an explanation as to the deficiency.

- c) MHD acknowledges that the County funding is provided by the FAA and FDOT. If the FAA and/or FDOT eliminates or reduces that funding, then the County may terminate this lease without cause, with no liability for damages to MHD, and with no obligation or duty to pay any sum to MHD other than the unreimbursed construction costs incurred by MHD up to the date MHD received the notice of termination due to elimination/reduction of FAA and/or FDOT funding. In the alternative, MHD may elect to complete the hangar project at its own expense in which case this lease will remain in effect.
- d) All MHD financial records pertaining to the premises, the operation and construction of the hangars paved areas and infrastructure must be kept according to generally accepted accounting principles and made available to auditors employed by the County, the state, or federal government during regular business hours (Monday through Friday, 8:30 AM to 5 PM, holidays excepted). MHD also acknowledges that all records pertaining to the premises, hangars, paved areas and infrastructure are public records under Chapter 119, F.S., and must be made available for examination and copying by any member of the public who so requests, in accordance with the provisions of Chapter 119, F.S.
- 4. a) When each hangar building, the paved areas, and the infrastructure receive a CO, then title to, and ownership of, the hangar building, paved areas, and the infrastructure automatically vests in the County.
- b) During the construction process and until ownership has vested in the County, MHD must not suffer, cause or permit any lien or encumbrance, however denominated, to be placed upon, or remain upon, any structure or fixture located on the premises. If a lien or encumbrance is placed on any structure or fixture, then MHD must immediately cause the removal of such a lien or encumbrance. Further, during the process of constructing each hangar building, paved area, and infrastructure and until (a) the certificate of occupancy is issued, (b) requests for final payment have been received from all contractors in privity with MHD showing that all their subcontractors and materialmen have been paid, and (c) a certificate of satisfaction and final payment has been received from each contractor in privity with MHD, MHD must require its general contractor to keep in full force and effect construction and performance bonds in the amount of the construction price, in a form satisfactory to the County's airport consultant or County Attorney.
- c) During the course of the construction of the four eight hangar buildings, paved areas and infrastructure, MHD must keep in effect builder's risk insurance as set forth in Exhibit B. Exhibit B is attached to, and made a part of, this lease.
- 5. On or before February 10, 2001, MHD must establish with a federally insured financial institution doing business in Monroe County, Florida, a letter of credit in the amount of the 50% of the construction cost of the four eight hangar buildings, paved areas, and infrastructure. The County may draw on the letter of credit if this lease is terminated by the County for cause with any portion of the total hangar project (including pavement and infrastructure) incomplete. The County may only use the funds received to complete the hangar project.
- 6. a) The term of this lease is for twenty years, beginning on the effective date with an option, at MHD's discretion, to renew for one additional ten year term. Upon the termination

of this lease, either under this paragraph or as provided elsewhere in this lease, MHD must peacefully surrender and abandon the premises and all structures to the County.

- b) The rent amounts are as follows:
  - (i) paved areas, \$0.11 per square foot per year;
  - (ii) buildings under roof, \$0.30 per square foot per year.
- c) All rent is due annually on the anniversary of the effective date. No rent is owed for unpaved or unroofed areas. When a structure (including a hangar building, paved area to serve the hangar building or infrastructure) has received a Certificate of Occupancy then the rent becomes due for that structure. If the substantial completion date is not the anniversary date of the effective date, then the rent will be prorated to reflect the amount of time remaining until the next anniversary date. All rental payments are due at the Airport Director's Office, Marathon Airport, 9400 Overseas Highway, Marathon, FL 33050. The annual rental payments will increase for each successive year of this lease for the initial 20 year term by a percent equal to the increase in the consumer price Index for all urban consumers (CPI-U) for the previous twelve months. If MHD exercises its option for an additional ten year term, then the rent will be charged at fair market value, established after an appraisal of the premises and calculated pursuant to the then current rates and charges study.
- 7. a) After the hangar buildings, paved areas and infrastructure become County property, the County will be responsible for all structural maintenance and repair. If any of the hangars, paved areas or infrastructure are destroyed or damaged, then the County must replace or repair them using materials of the same quality, workmanship, and dimensions as the damaged or destroyed structures. Rent shall be abated on a prorated basis for hangars made unserviceable by such damage until the date they are repaired.
- b) MHD is responsible for all normal and routine maintenance and for all utility charges and services.
- 8. a) Once a hangar and its related paved area are issued a CO, the MHD must make the hangar and paved area available for use by the operators of general aircraft for such fees or rent that MHD deems prudent; however, all fees and rents must be nondiscriminatory and apply equally to all similarly situated general aircraft operators.
- b) MHD may not conduct any commercial activity or operate an FBO on the premises without the permission of the County. The premises are leased strictly for general aviation use.
- c) MHD must keep the County's Airport Director apprised of the names of persons and their aircraft that MHD has authorized to use the hangars. The Director must be notified as soon as possible when an authorized occupant is added or deleted. MHD may sublet individual or multiple hangars without written approval from the County for a period under 12 months. MHD shall not be relieved of their obligations under the lease.
- 9. a) When the hangar buildings, paved areas and infrastructure receive a CO, then MHD must obtain the liability insurance as set forth in Exhibit C. Exhibit C is attached and made a part of this lease.
- b) MHD must keep in full force and effect the insurance described in Exhibit C during the term of this lease. If the insurance policies originally purchased which meet the requirements of Exhibit C are canceled, terminated or reduced in coverage, then MHD must immediately substitute complying policies so that no gap in coverage occurs.

- c) The insurance required of MHD in this paragraph is for the protection of the County, its property and employees, and the general public. The insurance requirement is not, however, for the protection of any specific member of the general public who might be injured because of an act or omission of MHD, its employees, agents or contractors. The insurance requirements of this paragraph are not intended to make any specific injured member of the general public a third party beneficiary under this lease. No failure by the County to enforce this paragraph shall constitute a breach of any duty or obligation owed to any specific member of the general public, nor shall it subject the County to liability to a specific member of the general public or his/her dependents, estate or heirs.
- 10. The Lessee covenants and agrees to indemnify and hold harmless the Lessor from any and all claims for bodily injury (including death), personal injury, and property damage (including property owned by Monroe County) and any other losses, damages and expenses (including attorney's fees) which arise out of, in connection with, or by reason of services provided by the Lessee or any of its contractors, occasioned by the negligence, errors or other wrongful act or omission of the Lessee or its contractor(s), their employees or agents. This obligation of indemnification is not vitiated by the insurance obligations contained in paragraph 9 and Exhibit C.
- 11. MHD may assign its duties, obligations and benefits under this lease subject to the written consent of the County's Board of County Commissioners which consent may not be unreasonably withheld. However, the Board's consent will not operate to release MHD from its responsibilities and obligations under this lease unless the Board specifically provides for such a release in its written consent.
- 12. The County may also cancel this lease if the leased premises are required to accommodate future development at the Marathon Airport or for any other reason determined by the FAA or the County. County, if it determines to cancel the lease under this paragraph, must provide the MHD with thirty (30) days written notice before the cancellation becomes effective. If County cancels the lease agreement under this paragraph, County will not be liable to MHD for any damages direct or consequential suffered by the MHD as the result of the cancellation. However, if the County exercises its right to cancel the lease under this subparagraph, the County must provide the MHD with substitute hangar facilities that are similar to the facilities furnished under this lease within a reasonable period of time, abating all rent until new facilities are provided.
- 13. a) The Tenant for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that
  - 1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
  - 2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination;
  - 3) that the Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

- b) That in the event of breach by MHD, Inc. of any of the above nondiscrimination covenants, the County shall have the right to terminate the lease and to re-enter and as if said lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed including exercise or expiration of appeal rights.
- c) It shall be a condition of this lease that the County reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property herein described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport.
- d) That the Tenant expressly agrees for himself, his successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the herein described real property to such a height so as to comply with Federal Aviation Regulations, Part 77.
- e) That the Tenant expressly agrees for himself, his successors and assigns, to prevent any use of the herein described real property which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard.
- f) This lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which the County acquired the subject property from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the lease of said lands from the County, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by the County pertaining to the Marathon Airport.
- g) Notwithstanding anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this agreement are nonexclusive and the County herein reserves the right to grant similar privileges to another tenant or other tenants on other parts of the Airport.
- h) MHD acknowledges that the hangar project provided for in this lease is in part funded by the FAA and FDOT. If an official of the FAA or FDOT determines that any portion of this lease violates any federal or state statute or rule, or FAA or FDOT policy, then that portion of this lease is void to the extent of the conflict.
- 14. Either party may terminate this lease for cause if the other party fails to comply with its obligations under this lease. Before a party may terminate this lease, it must give the other party written notice of the default stating that, if the default is not cured within 30 days from the date of the notice, then the party will terminate this lease. Termination under this paragraph does not relieve the defaulting party from whatever damages the other party may have suffered because of the default.
- 15. Notwithstanding anything to the contrary in paragraph 14, the Airport Director may order the hangars and paved areas closed to aircraft operators and to the public immediately if she determines that the insurance required by paragraph 9 has expired, been terminated or reduced in coverage. The Airport Director may keep the hangars and paved areas closed until such time as the lack of insurance is corrected.

- This lease has been carefully reviewed by MHD and the County after input from both parties. Therefore, this Agreement is not to be construed against any party on the basis of authorship.
- Notices as provided for in this Agreement, unless otherwise specified, must be sent by certified mail as follows:

TO COUNTY Airport Director Florida Keys Marathon Airport 9400 Overseas Highway Marathon, FL 33050

tesentative.

TO MHD Mary Schindler, Vice-President 11100 Overseas Highway Marathon, FL 33050

This lease is the parties' final mutual understanding. It replaces any earlier agreements or understandings, whether written or oral. This lease cannot be modified or replaced except by another written and signed agreement.

NESS WHEREOF, each party has caused this Agreement to be executed by its duly

INY L. KOLHAGE, CLERK

**BOARD OF COUNTY COMMISSIONERS** OF MONROE COUNTY, FLORIDA

(SEAL)

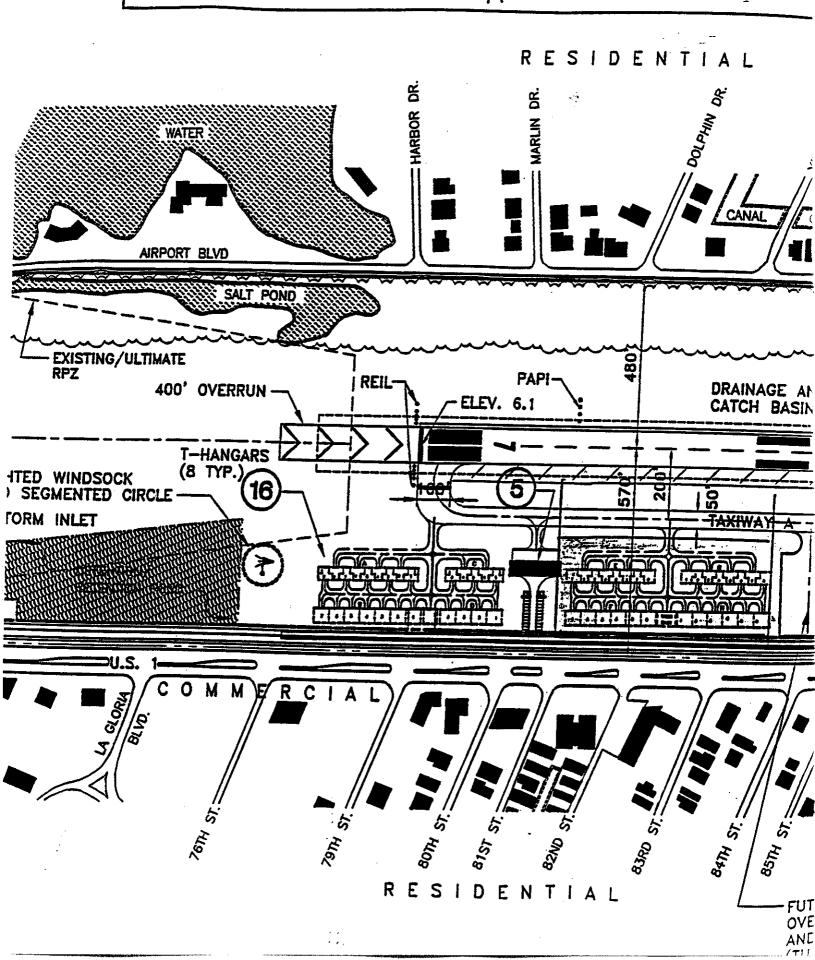
ATTEST:

Title

Brian C. Schmitt COMMISSION # CC801046 EXPIRES April 13, 2003 BONDED THRU TROY FAIN INSURANCE, INC.

jdairMHD

Marathon Hangar Development, INC



#### EXHIBIT "C"

#### MONROE COUNTY, FLORIDA RISK MANAGEMENT POLICY AND PROCEDURES CONTRACT ADMINISTRATION MANUAL

## General Insurance Requirements for Construction Contractors and Subcontractors

Prior to the commencement of work governed by this contract (including the pre-staging of personnel and material), the Contractor shall obtain, at his/her own expense, insurance as specified in the attached schedules, which are made part of this contract. The Contractor will ensure that the insurance obtained will extend protection to all Sub-Contractors engaged by the Contractor. As an alternative the Contractor may require all Subcontractors to obtain insurance consistent with the attached schedules.

The Contractor will not be permitted to commence work governed by this contract (including pre-staging of personnel and material) until satisfactory evidence of the required insurance has been furnished to the County as specified below. Delays in the commencement of work, resulting from the failure of the Contractor to provide satisfactory evidence of the required insurance, shall not extend deadlines specified in this contract and any penalties and failure to perform assessments shall be imposed as if the work commenced on the specified date and time, except for the Contractor's failure to provide satisfactory evidence.

The Contractor shall maintain the required insurance throughout the entire term of this contract and any extensions specified in any attached schedules. Failure to comply with this provision may result in the immediate suspension of all work until the required insurance has been reinstated or replaced. Delays in the completion of work resulting from the failure of the Contractor to maintain the required insurance shall not extend deadlines specified in this contract and any penalties and failure to perform assessments shall be imposed as if the work had not been suspended, except for the Contractor's failure to maintain the required insurance.

The Contractor shall provide, to the County, as satisfactory evidence of the required insurance, either:

Certificate of Insurance

OI

• A Certified copy of the actual insurance policy.

The County, at its sole option, has the right to request a certified copy of any or all insurance policies required by this contract.

All insurance policies must specify that they are not subject to cancellation, non-renewal, material change, or reduction in coverage unless a minimum of thirty (30) days prior notification is given to the County by the insurer.

#### EXHIBIT "B"

## BUILDER'S RISK INSURANCE REQUIREMENTS FOR

CONTRACT \_\_\_\_

## BETWEEN MONROE COUNTY, FLORIDA AND

The Contractor shall be required to purchase and maintain, throughout the life of the contract, and until the project is accepted by the County, Builder's Risk Insurance on an All Risk of Loss form. Coverage shall include:

Theft Aircraft
Windstorm Vehicles
Hail Smoke
Explosion Fire
Riot Collapse
Civil Commotion Flood

The policy limits shall be no less than the amount of the finished project and coverage shall be provided on a completed value basis.

Property located on the construction premises, which is intended to become a permanent part of the building, shall be included as property covered.

The policy shall be endorsed permitting the County to occupy the building prior to completion without effecting the coverage.

The Monroe County Board of County Commissioners shall be named as Additional Insured and Loss Payee.

#### WORKERS' COMPENSATION INSURANCE REQUIREMENTS FOR CONTRACT

## BETWEEN MONROE COUNTY, FLORIDA AND

Prior to the commencement of work governed by this contract, the Contractor shall obtain Workers' Compensation Insurance with limits sufficient to respond to the applicable state statutes.

In addition, the Contractor shall obtain Employers' Liability Insurance with limits of not less than:

\$500,000 Bodily Injury by Accident \$500,000 Bodily Injury by Disease, policy limits \$500,000 Bodily Injury by Disease, each employee

Coverage shall be maintained throughout the entire term of the contract.

Coverage shall be provided by a company or companies authorized to transact business in the state of Florida.

If the Contractor has been approved by the Florida's Department of Labor, as an authorized self-insurer, the County shall recognize and honor the Contractor's status. The Contractor may be required to submit a Letter of Authorization issued by the Department of Labor and a Certificate of Insurance, providing details on the Contractor's Excess Insurance Program.

If the Contractor participates in a self-insurance fund, a Certificate of Insurance will be required. In addition, the Contractor may be required to submit updated financial statements from the fund upon request from the County.

The acceptance and/or approval of the Contractor's insurance shall not be construed as relieving the Contractor from any liability or obligation assumed under this contract or imposed by law.

The Monroe County Board of County Commissioners, its employees and officials will be included as "Additional Insured" on all policies, except for Workers' Compensation.

In addition, the County will be named as an Additional Insured and Loss Payee on all policies covering County-owned property.

Any deviations from these General Insurance Requirements must be requested in writing on the County prepared form entitled "Request for Waiver of Insurance Requirements" and approved by Monroe County Risk Management.

#### GENERAL LIABILITY INSURANCE REQUIREMENTS FOR

CONTRACT

### MONROE COUNTY, FLORIDA AND

Prior to the commencement of work governed by this contract, the Contractor shall obtain General Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum:

- Premises Operations
- Products and Completed Operations
- Blanket Contractual Liability
- Personal Injury Liability
- Expanded Definition of Property Damage -

The minimum limits acceptable shall be:

\$1,000,000 Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

- \$ 500,000 per Person
- \$ 1,000,000 per Occurrence
- \$ 100,000 Property Damage

An Occurrence Form policy is preferred. If coverage is provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported should extend for a minimum of twelve (12) months following the acceptance of work by the County.

The Monroe County Board of County Commissioners shall be named as Additional Insured on all policies issued to satisfy the above requirements.

# VEHICLE LIABILITY INSURANCE REQUIREMENTS FOR CONTRACT BETWEEN

BETWEEN MONROE COUNTY, FLORIDA AND

Recognizing that the work governed by this contract requires the use of vehicles, the Contractor, prior to the commencement of work, shall obtain Vehicle Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum, liability coverage for:

Owned, Non-Owned, and Hired Vehicles

The minimum limits acceptable shall be:

\$1,000,000 Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

- \$ 500,000 per Person
- \$1,000,000 per Occurrence
- \$ 100,000 Property Damage

The Monroe County Board of County Commissioners shall be named as Additional Insured on all policies issued to satisfy the above requirements.